



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Y-K-K-

DATE: NOV. 5, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a businessman and nonprofit organization leader, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.¹

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for the EB-2 classification and for a national interest waiver.

Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

¹ The Director did not make a finding regarding the Petitioner's claimed eligibility as an individual of exceptional ability.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.² *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show an individual is a professional holding an advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, the Petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner submitted a "Certificate of Graduation" (1977) from [REDACTED] University in South Korea, but this certificate was unaccompanied by his official academic record from that university and a credentials evaluation indicating that the aforementioned degree is the foreign equivalent of a U.S. advanced degree or a U.S. baccalaureate degree. In addition, he provided a certificate from [REDACTED] in [REDACTED] Florida stating that he received "the degree of Doctor of Christian Counseling" (2012). The record, however, does not include his official academic record from [REDACTED]. Furthermore, the Director noted that the Petitioner had not demonstrated

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

that [] received accreditation from an accrediting organization recognized by the U.S. Department of Education or the Council for Higher Education Accreditation. For these reasons, the record supports the Director's determination that the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner's April 2018 letter accompanying the Form I-140 specifically stated that he was "seeking a National Interest Waiver under the EB-2 classification as an alien of exceptional ability." In his appeal brief, the Petitioner maintains that he meets the regulatory criteria for classification as an individual of exceptional ability. While the Director issued a request for evidence (RFE) relating to the requirements for EB-2 classification as a member of the professions holding an advanced degree, the RFE did not afford the Petitioner an opportunity to establish that he meets the criteria for individuals of exceptional ability listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)–(F). Furthermore, the Director's decision did not address whether the Petitioner satisfies at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. With respect to the Petitioner's claim of eligibility under the the first prong of the *Dhanasar* analytical framework, the Director's RFE asked for "[a] detailed description of the proposed endeavor." In response, the Petitioner asserted that his proposed endeavor "will lead to the cultural development and economic improvement in the U.S." He further stated that his undertaking seeks "to improve the quality of life for many people through cultural and economic improvement."⁴

The above description lacks specific, detailed information regarding the Petitioner's proposed work in the United States. Because the Petitioner has not sufficiently clarified his proposed endeavor, we withdraw the Director's finding that the Petitioner meets *Dhanasar*'s first prong. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the record does not clearly explain the Petitioner's proposed endeavor such that we are able to determine, without additional information and evidence, that his work will have both substantial merit and national importance and that he is well positioned to advance his proposed endeavor.⁵ Accordingly, the Director should conduct further review of this issue and may request additional documentary evidence to clarify the nature of Petitioner's proposed work in the United States.

⁴ The Petitioner also discussed his past leadership roles for various community organizations, but these prior activities are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, he need not have a job offer from a specific employer. Nevertheless, further information about the nature of his proposed endeavor is necessary for determining whether it has substantial merit and national importance. Relevant evidence may include detailed information about the capacity in which he intends to work, or documentation of formal or informal communications from potential U.S. employers to illustrate the type of position he seeks.

III. CONCLUSION

We are therefore remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for classification as an individual of exceptional ability. In addition, upon clarification of the Petitioner's proposed endeavor, the Director should apply the *Dhanasar* analytical framework to make a determination as to whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.

Cite as *Matter of Y-K-K-*, ID# 5102352 (AAO Nov. 5, 2019)